

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHARLIE B. BUSH JR.,

Plaintiff,

vs.

TONY'S CREW, INC., a Nebraska
Corporation; MICHAEL L. HORN, and
KATHY J. HORN,

Defendants.

4:20CV3029

**MEMORANDUM
AND ORDER**

Plaintiff, a non-prisoner, has been given leave to proceed in forma pauperis. (Filing No. 6.) The court now conducts an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under 28 U.S.C. § 1915(e)(2) (requiring the court to dismiss actions filed in forma pauperis if they are frivolous or malicious, fail to state a claim on which relief may be granted, or seek monetary relief against a defendant who is immune from such relief).

I. SUMMARY OF COMPLAINT

Plaintiff seeks to recover \$5,875.00 from his former landlord under Nebraska's Uniform Residential Landlord and Tenant Act, Neb. Rev. Stat. §§ 76-1401 to 76-1449 (Westlaw 2020), after his dog died from ingesting moldy water from a bathroom in Plaintiff's rental property. Plaintiff claims that the moldy water was caused by his landlord's failure to make repairs to his rental property in violation of Neb. Rev. Stat. § 76-1419 (Westlaw 2020) (landlord to maintain fit premises). Plaintiff also claims that his landlord conveyed "false information to the court because he did not want to be responsible for the action he left in the house," forcing Plaintiff and his family to vacate the property without their security deposit.

II. DISCUSSION

Federal district courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The subject-matter jurisdiction of the federal district courts is generally set forth in 28 U.S.C. §§ 1331 and 1332. Under these statutes, federal jurisdiction is available only when the parties are of diverse citizenship and the amount in controversy exceeds \$75,000, or when a “federal question” is presented. “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

Subject-matter jurisdiction is proper pursuant to 28 U.S.C. § 1332, commonly referred to as “diversity-of-citizenship” jurisdiction, when “the citizenship of each plaintiff is different from the citizenship of each defendant.” *Ryan v. Schneider Natl. Carriers, Inc.*, 263 F.3d 816, 819 (8th Cir. 2001). In addition, the amount in controversy must be greater than \$75,000.00. 28 U.S.C. § 1332(a).

Subject-matter jurisdiction is also proper under 28 U.S.C. §§ 1331 when a plaintiff asserts a claim arising under a federal statute, the Constitution, or treaties of the United States, commonly referred to as “federal-question” jurisdiction. *McLain v. Andersen Corp.*, 567 F.3d 956, 963 (8th Cir. 2009). Under this type of jurisdiction, and in order to bring a claim under 42 U.S.C. § 1983, a plaintiff must allege that the defendants deprived her of a right secured by the Constitution or laws of the United States and that the alleged deprivation was committed under “color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993).

Plaintiff’s Complaint does not allege that he is a citizen of a different state than each defendant, that the amount in controversy exceeds \$75,000, nor do Plaintiff’s allegations present a “federal question.”¹ Therefore, Plaintiff has failed to

¹ Rather, Plaintiff presents state-law claims that belong in Nebraska district or county court. *See* Neb. Rev. Stat. § 76-1409 (Westlaw 2020) (“The district or county court of this state may exercise jurisdiction over any landlord or tenant with respect

establish a basis upon which this court may exercise jurisdiction in this matter, and this matter must be dismissed.

IT IS ORDERED:

1. This case is dismissed without prejudice for lack of federal subject-matter jurisdiction.
2. Judgment shall be entered by separate document.

Dated this 24th day of March, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge

to any conduct in this state governed by the Uniform Residential Landlord and Tenant Act or with respect to any claim arising from a transaction subject to the act for a dwelling unit located within its jurisdictional boundaries.”)